

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-7350-2015

Date of decision: 19.08.2019

Kaptan and another

..... Appellants

Versus

Deep Chand and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Sumit Sangwan, Advocate for the appellants.

Mr. Anshuman Dalal, Advocate for respondent No. 1.

Mr. Vinod Chaudhri, Advocate
for the respondent No. 3-Insurance Company.

RAMENDRA JAIN, J. (ORAL)

Un-successful claimant-appellants have filed instant appeal against Award dated 09.07.2015 of the Motor Accident Claims Tribunal, Jhajjar (for short-'the Tribunal'), dismissing their claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

Briefly, on 09.07.2012, deceased-Chameli along with her son appellant No. 2-Sandeep (now deceased), standing on bus stand of Town Charkhi Dadri, was strangely hit by offending bus bearing registration No. HR-63-A-9367, driven by respondent No. 1-Deep Chand, while reversing the same in a rash and negligent manner, causing multiple grievous injuries to Chameli, who succumbed to the same on the spot.

Consequently, husband and sons of deceased-Chameli filed claim petition under Section 166 of the Act, claiming compensation to the tune of ₹10,00,000/- along with interest @ 18% per annum before the Tribunal at Jhajjar for her death.

After holding trial, the Tribunal dismissed the claim petition vide Award, impugned herein.

Learned counsel for the appellants *inter alia* contends that it is a case, where doctrine of *res ipsa loquitur* applies. Respondent No. 1- driver reversing the offending bus in a rash and negligent manner without help of the conductor hit deceased-Chameli, because, in case, conductor would have guided him, while doing so, the offending bus must not have hit the deceased-Chameli, inasmuch as, the conductor could blow whistle or raise voice to stop the bus before hitting the deceased. The learned Tribunal, ignoring this aspect of the matter and without appreciating the fact that respondent No. 1 had admitted the above accident, illegally dismissed the claim petition.

On the other hand, learned counsel for respondents No. 1 and 3, vehemently refuting the above submissions of learned counsel for the appellants, pleaded legality and validity of the impugned Award.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal merits dismissal for the reasons to follow:

As per pleadings of the appellants and evidence led by them during trial, PW-2 Sandeep son of deceased-Chameli, was accompanying her and thus, had witnessed the occurrence. However, PW-2-Sandeep, in

his cross-examination, categorically admitted twice that he had not witnessed the occurrence. Except him, no other eye-witness was examined by the appellants to prove negligence of respondent No. 1 in causing the alleged accident, resulted into death of Chameli. Hence, it is a case of no evidence, to prove the negligence of respondent No. 1.

I have carefully gone through the impugned Award, passed by the Tribunal and find no illegality or perversity in the same. Therefore, the same is upheld.

The instant appeal, being meritless, is dismissed.

However, the appellants are held entitled to ₹50,000/- as compensation under Section 140 of the Act, under the head 'no fault liability', which shall be deposited by respondent No. 3-Insurance Company, along with interest @ 7.5% from the date of filing of claim petition till realization, before the learned Tribunal within six weeks from today, for onward disbursement to the claimant-appellants, in accordance with law against proper receipt and identification.

August 19, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No